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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 128 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

DEEPAK PIPE FACTORY

Appearance:

MR MIHIR JOSHI FOR MR MANISH R BHATT for Petitioner

SERVED BY RPAD - (N) for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 14/06/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1. Following two questions have been referred to this Court for its opinion by the Income Tax Appellate Tribunal, Ahmedabad Bench "A" under the provisions of section 256(1) of the Income Tax Act,1961 (hereinafter referred to as 'the Act') :

"1. Whether the Appellate Tribunal has been right in law in holding that deduction u/s. 80HH and 80J was admissible to the assessee in full without deducting the amount admissible u/s. 80HH from the amount admissible u/s.80J of the Income-tax Act,1961?

2 Whether the Appellate Tribunal has been right in law in holding that the assessee is entitled to depreciation on the building and machinery and investment allowance on machinery without deducting subsidy from their actual cost ?"

2. We have heard learned Advocate Mr.Mihir Joshi appearing for the Revenue. Nobody appears for the respondent assessee though the respondent has been duly served. Looking to the facts of the case, learned Advocate Mr.Mihir Joshi appearing for the Revenue has fairly submitted that both the questions have already been decided.

3. So far as the first question is concerned, this Court has already opined in favour of the assessee and against the Revenue by answering the question in the affirmative in I.T.R.No.282 of 1985 whereas so far as the second question is concerned, Hon'ble Supreme Court has answered the said question in the affirmative i.e. in favour of the assessee and against the Revenue in case of C.I.T. Vs. P.J.Chemicals Ltd., reported in 210 I.T.R.830.

4. In view of the fact that both the questions, which have been referred to us for our opinion, have already been decided, in respectful agreement with the judgments referred to hereinabove, we answer the questions in the affirmative i.e. in favour of the assessee and against the Revenue.

5. Reference is answered accordingly and is disposed of with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta,J)

m.m.bhatt.